

[1]

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CIVIL SECOND APPEAL NO.326/07

Ram Gopal & Ors. **Versus** Shri Kishan

DATE OF ORDER :: 16/07/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Jitendra Pandey, for appellants

* * *

It is a defendants' appeal assailing the judgment & decree of learned trial Judge dated 2nd May, 2000 whereby the suit of plaintiff has been decreed and further affirmed in appeal preferred by appellants.

Plaintiff-respondent filed a suit for mandatory and permanent injunction and the appellants apart from their written statement have also filed their counter claim. Learned trial Judge in all framed two issues in this regard and after taking into consideration the material, decreed the suit of plaintiff-non-petitioner and issue No.2, which has been framed on the basis of counter claim, was rejected – against which appellants preferred appeal that too has been dismissed.

Counsel for appellants has tried to convince this court that the documents upon which learned trial Judge placed reliance and recorded finding do not corroborate with the existence of way

[2]

available at site and apart from it, counsel has raised further objection that the suit itself was not maintainable in view of Section 217 of Rajasthan Tenancy Act.

So far as question raised with respect to appreciation of relevant documents is concerned, learned trial Judge and so also First Appellate Court recorded a concurrent finding of fact by rejecting the plea of appellants. So far as the question with regard to maintainability of suit is concerned, no such issue was framed and it is a mix question of law and fact which could not have been appreciated at a later stage. No substantial question of law arises for consideration in the instant appeal.

Consequently, the appeal fails and is hereby dismissed.

[AJAY RASTOGI], J.

FRBOHRA, JR. P. A.